

STATE OF MONTANA TERM CONTRACT

DEPARTMENT OF ADMINISTRATION
PURCHASING BUREAU
165 MITCHELL BUILDING
HELENA MT 59620-0135
PHONE: (406) 444-2575 FAX: (406) 444-2529
www.mt.gov/doa/ppd/index.htm

T.C. #443-B MERCURY CONTAINING LAMP RECYCLING SERVICE

This is a non-exclusive contract

CONTRACT PERIOD	FROM	OCTOBER 1, 1997	CONTRACT YEAR	NEW (X)
	TO	JUNE 30, 1999		RENEW ()
VENDOR ADDRESS	ECOLIGHTS NORTHWEST 1131 HANFORD STREET SEATTLE WA 98134		ORDER ADDRESS	SAME OR WWW.ECOLIGHTS.COM
ATTN:	CRAIG LORCH OR STEPHEN MILLER		ATTN:	SAME
PHONE:	(206)343-1247		PHONE:	SAME
FAX:	(206)343-7445		FAX:	SAME

PRICES ➤ SEE SECTION 4.0

DELIVERY ➤ QUARTERLY PICKUP (JANUARY, APRIL, JULY, OCTOBER) SEE SECTION 3.0

F.O.B. ➤ AGENCY LOCATION, SHIPPING POINT, SEE SECTION 3.0

TERMS ➤ NET 30 DAYS, SEE SECTION 4.0

REMARKS:

The terms and pricing from this contract are for the following cities only; Missoula, Helena, Billings, Butte, Bozeman, Kalispell, Dillon, Great Falls, Miles City, Deer Lodge, and Warm Springs. Whenever possible, Ecolights NW will extend pricing to other locations.

Agencies are required to palletize and shrink wrap full pallets. Less than pallet loads will be palletized and shrink wrapped by Ecolights.

Agencies must request lamp pickup a minimum of five calendar days prior to the start of the quarter. Invoices will be sent by mail or electronically after recycling is completed.

Shipping containers and shipping documents will be provided at no cost by contacting Ecolights. To the greatest extent possible, agencies are encouraged to use the original shipping boxes.

BRAD SANDERS, Contracts Officer

AUTHORIZED SIGNATURE/DATE

STATE OF MONTANA - TERM CONTRACT
Standard Terms and Conditions

The following standard terms apply unless specifically stated otherwise within the term contract.

REFERENCE TO CONTRACT

The contract (Purchase Order) number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract. Furnish all invoices in triplicate.

SHIPPING

Goods shall be shipped prepaid, F.O.B. Destination. In the event the terms specify F.O.B. Shipping Point, shipping charges will be prepaid and itemized as a separate line item on invoicing. Such shipments shall be via the least expensive way. The State reserves the right to refuse any C.O.D. delivery.

PAYMENT TERM

All payment terms will be computed from the date of delivery of goods OR receipt of a properly executed invoice, whichever is later. The State is allowed 30 days to pay such invoices.

TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

HAZARDOUS CHEMICAL INFORMATION

The contractor shall provide one set of the appropriate material safety data sheets and container label upon delivery of a hazardous chemical to the user agency. All safety data sheets and labels will be in accordance with the OSHA "Hazard Communication Rule", 29 CFR 1910 and 50-78-101 through 50-78-402 MCA.

VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

NON-DISCRIMINATION

The contractor must comply with the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

All hiring for goods and services purchased by this contract must be on the basis of merit and qualifications; there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Please provide as much advance notice as possible for requests.

HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this agreement, all to the extent of the contractors negligence.

ACCESS AND RETENTION OF RECORDS

The contractor agrees to provide the Department, Legislative Auditor or their authorized agents, access to any records necessary to determine if the contract has been complied with. The contractor agrees to create and retain records supporting the services rendered (or goods delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or third party.

CONFORMANCE WITH INVITATION FOR BID/PROPOSAL

No alteration in any of the terms, conditions, delivery, price, quality, quantities or specifications of the order as established by quotation from the contractor, shall be granted without prior written consent of the Purchasing Bureau. Goods delivered which do not conform to the contract terms, conditions and specifications may be rejected and returned at the contractor's expense.

State agencies will place orders directly with the contractor during regular working hours. Orders may be placed by phone and will be confirmed with a written memo or purchase order. The agency will reference the term contract number on all purchase orders or correspondence pertaining to the contract.

Revised 02/98

MERCURY CONTAINING LAMP RECYCLING SERVICE

1.0 PARTIES

THIS CONTRACT, is entered into by and between

The State of Montana, Department of Administration
Procurement And Printing Division, Purchasing Bureau
125 North Roberts
Mitchell Building, Room 165
Helena, Montana
(406) 444-2575

AND;

Ecolights Northwest, Inc.
1131 SW Hanford Street
P.O. Box 94291
Seattle, WA 98124
(206) 343-1247

THE PARTIES AGREE AS FOLLOWS:

2.0 EFFECTIVE DATE, DURATION AND RENEWAL

This contract, contract #479890 shall take effect on October 1, 1997. The contract shall terminate on June 30, 1999, unless terminated earlier in accordance with the terms of this contract. (See 18-4-313, MCA).

This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended in one (1) year intervals for a period not to exceed five (5) additional years. This extension is dependent upon legislative appropriations and in no case may this contract run longer than a seven (7) year period.

3.0 SERVICES OR GOODS (SCOPE OF WORK)

The contractor agrees to provide mercury lamp recycling services to the State of Montana, as specified in RFP #9742-B, and contractors response as amended. The contractor agrees to extend recycling services to all other State Governmental agencies who agree to the terms and conditions defined in the original RFP and Ecolights response.

3.1 PICKUP FREQUENCY

The contractor agrees to make quarterly pickups throughout the contract period, (January, April, July, October) from any participating agency requesting recycling services. The pickup area encompasses the cities of Missoula, Helena, Billings, Butte, Bozeman, Kalispell, Dillon, Great Falls, Miles City, Deer Lodge, and Warm Springs. Agency personnel are required to make pickup arrangement via a telephone call

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(206)343-1247 or by contacting Ecolight's Internet site, (ecolights.com) a minimum of seven (7) full calendar days prior to the start of each quarter. Contractor agrees to complete quarterly pickups by the last day of the first month of each quarter.

3.2 PACKAGING

The contractor will supply all participating agencies an adequate supply of shipping boxes and/or 55 gallon drums for packaging of used and/or crushed lamps. Containers will adequately protect lamps from damage during shipment. All containers must be DOT shippable.

3.3 LOADING/LABELING

The contractor is solely responsible for loading all containers onto contractor vehicle. Contractor is responsible for palletizing, shrink wrapping, and securing all containers for transport. Shipments of full pallets will be shrink wrapped by the shipping agency. Shipping labels will be supplied by contractor. Participating agencies will provide the necessary information for the shipping document to be completed by the contractor upon pickup. Agency will retain copy of shipping documents. Title for the material shall pass from the agency to contractor at such time as the waste is loaded and signed for by contractor's authorized representative at agency's facility.

3.4 RECYCLING PROCESS

The following recycling process is per Ecolight's original response. Any change to this process must be approved prior to implementation, and is solely at the State's discretion. A certificate of recycling will be issued to each agency.

Upon arrival at EcoLights Northwest's facility, EcoLights Northwest's technicians will verify labeling on all pallets delivered, verify accuracy of the accompanying shipping documents, and schedule the lamps for processing.

Unbroken straight fluorescent lamps will be automatically counted as they enter our recycling equipment, providing an accurate count of the number of straight tubes actually recycled. Non-straight lamps will be counted separately or weighed prior to processing. The operator records the count at the end of each lamp type run. This count provides the basis for billing.

EcoLights Northwest utilizes a DYTEK Series 3600 lamp processor. The recycling process separates lamps into glass, aluminum end caps, ferrous metals, mercury vapor, and mercury phosphor powder.

Glass generated in the process is currently used as aggregate in the production of cement. Aluminum end caps are sold to an aluminum recycler and ferrous metals to a ferrous metals recycler. Glass and metals are processed sufficiently to pass TCLP tests for mercury contamination.

Mercury phosphor powder is to be sent to Bethlehem Apparatus in Hellertown, Pennsylvania for retort. Retorted mercury is resold for reuse by industry.

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Mercury vapor generated in the recycling process is captured in carbon filters. Saturated filters will be sent to Bethlehem Apparatus and retorted to capture the mercury.

3.5 INVOICING

Invoice will be submitted either in hardcopy form or electronically. Invoices will be submitted to each participating agency after recycling is completed, along with a certificate of recycling. Agencies will pay within 30 days of receipt of a properly executed invoice, addressed to the payer agency. Per MCA 17-8-244, a state agency shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the agency fails to make timely payment. Payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement.

4.0 CONSIDERATION/PAYMENTS

In consideration for the services to be provided, each using agency shall pay according to the following schedule:

Whole Lamps

Straight tubes are standard, non-shattershield lamps. Shatterproof lamps will be accepted at discretion of the contractor.

Quantity in Any combination of 4' Equivalents	Cost per single lamp			
	4' Straight tubes	8' Straight tubes	4' U Tubes	HID
1-399	\$0.43	\$0.85	\$.085	\$1.70
400-959	\$0.40	\$0.79	\$0.79	\$1.56
960-1920	\$0.37	\$0.74	\$0.74	\$1.42
Greater than 1921	\$0.34	\$0.68	\$0.68	\$1.28

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Crushed Lamps

Maximum cost per 55 gal Drum	
1 Drum	\$275.00
2 Drums	\$275.00
3 Drums	\$275.00
Greater than 3 Drums	\$250.00

Agencies shall reimburse Ecolights Northwest for taxes, tariffs, fees, surcharges, or other charges imposed by the State of Montana by legislation or regulations enacted or promulgates after the execution date of the contract and levied specifically upon the transportation, storage, processing, or recycling of the material covered by this contract upon thirty (30) days written notice of such change in legislation and upon submission by Ecolights Northwest of evidence that such charges have been levied or paid.

If any significant change occurs with respect to any laws, rules, regulations or ordinances applicable to the right or obligation contained in this contract, either party shall have the option to immediately terminate this contract or to have the terms of this contract renegotiated to bring this contract and the respective obligation or rights of the parties into compliance with such change or changes.

5.0 ACCESS AND RETENTION OF RECORDS

The contractor agrees to provide the State, or their authorized agents access to any records necessary to determine if the contractor has complied with the terms of the contract. (Reference 18-1-118, MCA)

The contractor agrees to create and maintain records supporting the services rendered during the term of the contract. Said records must be retained for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State or third party, whichever is longer.

6.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The contractor shall not subcontract or assign its obligation under this contract without prior written consent of the State. If such subcontracting is approved, all requirements of the contract shall be binding to the subcontractor

7.0 HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any

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kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this contract, all to the extent of the contractors negligence.

The state agrees to indemnify the contractor while acting within the scope of it's duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense on account of bodily or personal injuries, death, or damage to property arising out of services performed resulting from the negligent acts of the state.

8.0 CONTRACT PERFORMANCE SECURITY

The contractor has provided Contract Performance Security in the amount of \$100,000 in the form Performance Bond #LB1518.

9.0 NON-EXCLUSIVE CONTRACT

This contract is entered into solely for the convenience of the State, and in no way precludes the State or any of its user agencies from obtaining like goods or services from other suppliers.

10.0 INSURANCE

The contractor shall maintain for the duration of the contract, at its cost, primary insurance coverage against claims for injuries to persons or damages to property including contractual liability which may arise from work performed under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns, or servants.

The contractor must provide a certificate for Commercial General Liability and Commercial Automobile Liability, and Pollution Liability Insurance (Occurrence Coverage), to include bodily injury, personal injury and property damage with combined single limits of \$1,000,000 per claim and \$2,000,000 aggregate per year, from an insurer with a Best's Rating of no less than A-.

This certificate MUST name the State of Montana as an additional insured under the contractors' policy including the contractor's general supervision, products, premises and automobiles used.

A Certificate of Insurance, indicating compliance with the required coverages has been filed with the Department.

11.0 WORKERS' COMPENSATION/INDEPENDENT CONTRACTORS EXEMPTION

Contractors are required to maintain Workers' Compensation or an Independent Contractors Exemption covering the contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, Montana Code Annotated. Neither the contractor nor its employees are employees

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of the State. This insurance/exemption must be valid for the entire contract period.

12.0 COMPLIANCE WITH LAWS

The contractor must comply with the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1873. All hiring by contractors supplying goods or services purchased by this contract must be on the basis of merit and qualifications; there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

13.0 CONTRACT TERMINATION

This contract may be terminated immediately by the State for cause, including non-appropriation of funds, breach or non-performance of any contract term. The State may allow the contractor to terminate this contract, if the number of lamps recycled after the first year of the contract is significantly lower than those identified in Section 4.0 of RFP #9742-B.

14.0 NON-DISCRIMINATION

In accordance with Federal and State laws, the proposer agrees not to discriminate against any client, employee or applicant for employment or for services, because of race, creed, color, national origin, sex, age or handicap, with regard to, but not limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; selection for training; or rendition of services.

It is further understood that any contractor who is in violation of this clause shall be barred forthwith from receiving awards of any purchase from the State of Montana, unless a satisfactory showing is made that discriminatory practices have ceased and the recurrence of such acts is unlikely.

15.0 LIAISON AND SERVICE OF NOTICES

Brad Sanders will be the Contract Administrator liaison and Peggy Nelson will be the Market Development/Educational Outreach liaison for the State.

Steve Miller will be the liaison for the contractor.

Written notices, requests or complaints will first be directed to the Contract Administrator.

16.0 CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See 18-1-401, MCA).

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17.0 CONTRACT REPORTING

The contractor shall, furnish to the State Department of Administration reports (written narrative with summary sheet) of contract usage starting six (6) months after signing the contract, and follow-up reports every six months until end of contract. Each report shall be due 30 days after the end of the reporting period and contain the total quantity of lamps collected and the total dollars expended, broken out by agency. A final report shall be due 30 days after termination of the contract. Reported volumes and dollar totals may be checked against state records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract.

18.0 SCOPE, AMENDMENT AND INTERPRETATION

This contract consists of 6 numbered pages, RFP # 9742-B as amended, and the contractor's response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in that same order.

These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.